



Risk Management Advisor

*"Providing Effective
Risk Management Services and
Resources for Idaho Citizens"*

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Avoiding Employment Liability Claims

What Laws You Need to Know Before Deciding to Discipline a Public Employee

**Brian Benjamin, Office of the Attorney General, Civil Litigation Division Deputy Attorney General
and Dan Steckel, Division of Human Resources, Deputy Attorney General**

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Under the employment-at-will doctrine, most private employers can terminate or discipline their employees at any time and for any reason without encountering employment liability claims. However, most State of Idaho employees are granted several protections that take them out of the concept of "at will" employment. All permanent "classified employees" of the State of Idaho enjoy various statutory and due process protections. Further, permanent classified employees have the right to appeal certain disciplinary actions to the Idaho Personnel Commission.

Management/Supervisory personnel can sometimes overlook the many rules and laws enacted to protect state employees. In doing so, they may violate due process and/or become involved in an appeal before the Idaho Personnel Commission. They could avoid this situation by consulting with their agency

Human Resources Office (HR) and legal counsel before initiating and proceeding with personnel actions or discipline. This article provides a basic outline for public managers and supervisors to consider in making the decision to discipline employees.

"By law, classified state employees have a 'property interest' in their employment."

By law, classified state employees have a "property interest" in their employment. Serious disciplinary action, including dismissals, suspensions, demotions, reduction in pay, and some involuntary transfers, involves denying an employee a property right in their employment. "Due process" is required before this kind of discipline

can be imposed. Due process simply means giving the employee notice and opportunity to be heard before a final decision is made to impose a disciplinary action (IDAPA 15.04.01.200.06). Failure to provide due process can result in employment liability claims. Lesser disciplinary actions not involving denial of a

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Fifteen-Passenger Van Safety

Lori Autio, Risk Management Loss Control Specialist

As a result of several serious, life-altering injury accidents involving 15 passenger vans, the National Highway Traffic Safety Administration (NHTSA) conducted a study and determined these vans, when fully loaded with passengers, have a higher propensity to rollover during panic maneuvers. The NHTSA recently issued a cautionary warning to consumers advising that 15-passenger vans (with 10 or more occupants) had a rollover rate in single vehicle crashes that is nearly three times the rate of those that were lightly loaded.

The cautionary warning from NHTSA does not require any specific action to be taken under regula-

tory laws at this time. However having been advised of a potential risk many Idaho Universities and other State agencies are beginning to take a pro-active approach in regard to the use of these vehicles. Universities throughout the State have been evaluating their overall policies and procedures for use of these vans when transporting sporting teams and for other academic needs. Many universities, along with a few larger State agencies, have implemented additional training for drivers. Some Universities are also considering the elimination of these vans from their transportation fleet altogether.

While elimination of 15-passenger vans may not be appropriate for every agency, it is appropriate to take a few minutes to evaluate the type of training each driver receives before he/she drives a van loaded

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New Faces at OIM

The Office of Insurance Management welcomes two new staff members.

Ray Heidt

Claims Adjudicator



Ray grew up in upstate Washington, joined the Army directly out of high school and spent 18 months in Korea. He planned on making the military his career, but claims that his wife changed his plans. He earned both bachelor's and master's degrees from San Jose State and a PhD in Communications from the University of Utah. He taught at Utah State University for eight years prior to entering the insurance industry full time. Ray has 33 years of experience dealing with all aspects of insurance claims.

Lori Autio

Loss Control Specialist



Prior to joining the State of Idaho, Office of Insurance Management, Lori worked for more than 20 years with a large Pacific Northwest retailer, gaining experience in all aspects of Risk Management. Lori joined the Office of Insurance Management as the Risk Management Loss Control Specialist on April 23, 2001. She will work with State agencies to help them with the review and development of loss control programs as they relate to automobile losses, general liability, and property conservation programs.

"Van Safety" Continued from page 1

with passengers. Driving a van is very different than driving a car and drivers need to be aware of its specific handling characteristics. Does the driver know how to handle these vans in an emergency situation? Does the driver understand why the van handles differently in a strong wind and does he/she know how to compensate for the extra length of the vehicle when maneuvering around corners?

A 15-passenger van's increased height, length and weight changes the center of gravity. When the van is loaded with passengers and cargo, the center of gravity rises and creates a serious compromise in the stability of the vehicle, especially during quick, unplanned maneuvers; such as sudden turns or striking a curb at a high rate of speed. Drivers should exercise caution and keep the van's speed at or below the posted speed limits. Drivers should slow down in adverse weather conditions or when the road conditions are not ideal (i.e., Heavy traffic, road construction, gravel, etc.). Among other things, drivers need to be aware of the longer stopping distances required when the van is fully loaded and they need to know

how to anticipate the wider turning radius required.

Van Driver Training is available from a number of sources and can be provided using various methods. A self-study written training program entitled "Operating a Passenger Van" has been developed by the Office of Insurance Management, Department of Administration and is available upon request. This self-study program might be used as a "refresher" for those employees who drive 15-passenger vans regularly. The National Safety Council has a course entitled "Coaching the Van Driver II". It runs approximately 4 hours and might be more suited for new drivers or drivers who do not drive a 15-passenger van frequently. Several larger agencies throughout the State currently use this course.

Regardless of what type of training is provided for drivers or the decision each agency reaches in the ultimate disposition of these vans, take advantage of the existing personal protection equipment in each van: "SEATBELTS". Using seatbelts is the most effective way to significantly reduce injury or death if involved in any type of automobile accident and Idaho Law requires Seatbelt use. Drivers are encouraged to buckle-up and to ensure passengers are wearing their seatbelts before leaving the parking lot. If you drive a 15-passenger van or a personal vehicle, put your safety and the safety of your passengers first. Be a defensive driver.



For more information

on safety training available throughout the State, you can contact Lori Autio, our Loss Control Specialist at 208/332-1867 or lautio@adm.state.id.us or visit the Division of Human Resources training website at www.dhr.state.id.us/Training/TrainingHome.htm

"Employment Claims" Continued from page 1

property right can be handled through the agency's problem solving procedure.

The protections granted to permanent classified employees are derived from the Idaho Personnel System Act and the Rules of the Division of Human Resources and Personnel Commission. All departments and agencies have their own policies regarding employee misconduct and discipline. Strict compliance with these rules is the safest way to avoid liability.

Management should consult with other resources early in the investigation and decision-making pro-

sion of Human Resources. The Civil Litigation Division of the Attorney General's Office can also provide assistance in these matters.

If disciplinary action is still contemplated after assessment and advice from HR and legal counsel, the next step is to provide the employee with a written notice of the contemplated disciplinary action, the basis for the contemplated action, and an explanation of evidence supporting the contemplated action. This step requires investigation and review of the employee's personnel file, performance records, evaluations and any other disciplinary records. The contemplated disciplinary action must be based on facts and not on suspicions, inferences or bias.



The employee's response may be in person or in writing and the employee has the right to be represented by a person of his or her own choosing. The employee must be informed of all these rights as part of the due process procedure. These rights are often contained in the Notice of Contemplated Disciplinary Action. Management personnel may draft the Notice, but should not do so without advice from their HR officer or legal counsel. The Deputy AG can assist in drafting the Notice and assure that it is served properly.

In summary, disciplining classified employees represents a complex process that, if not handled properly, can result in employment practices claims. (For an example of why avoiding employment practices claims is so important, see the chart below.) Agencies must consult with their HR office, Deputy AG, and the Division of Human Resources at the beginning of and throughout the process to ensure strict compliance with due process and allow them to give advice on contemplated actions.

Although this article only covers one element of Employment Practices claims: wrongful termination, other employment issues such as discrimination and sexual harassment, are included in these types of claims.

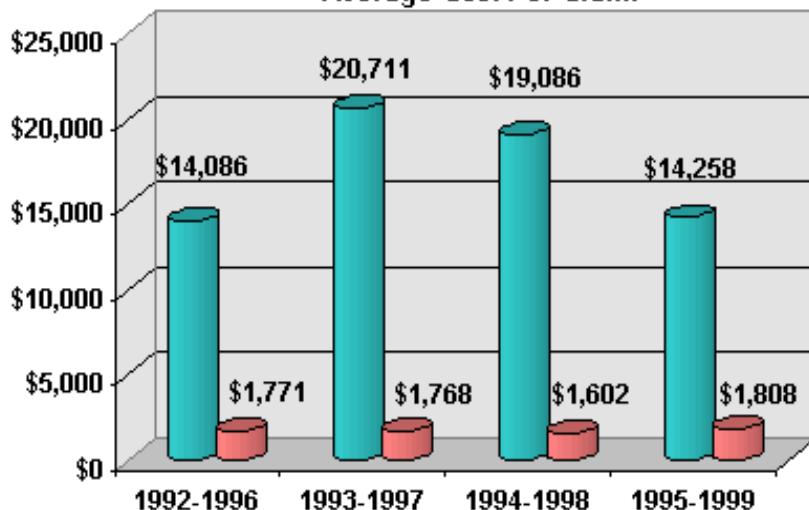
Who to Contact...

for Questions About Employment Disputes

1	Your Agency Human Resources Officer		
2	Your Agency Deputy AG		
3	State of Idaho, Division of Human Resources	www.dhr.state.id.us	208/334-3345
4	Civil Litigation Division of the Attorney General's Office	www2.state.id.us/ag	208/334-2400

cess to determine whether there is proper cause for discipline, and to assure the employee is given proper notice and adequate opportunity to respond. They should first consult with their HR office and Deputy AG. If the department or agency does not have an assigned Deputy AG, they should contact the Divi-

Employment Practices vs Auto Liability Claims
Average Cost Per Claim



Although, the frequency (number) of Auto Liability claims is 3 to 4 times higher than Employment Liability claims, the average cost of an Employment Liability claim is almost 10 times higher than Auto Liability claims.

■ Emp Prac Avg Cost per Claim
■ Auto Liab Avg Cost per Claim

Source: State of Idaho, Office of Insurance Management

For Questions About Any of These Articles

Brian Benjamin,
Deputy AG, Office of
the Attorney General,
Civil Litigation
Division
State of Idaho
208/334-2400
bbenjamin@ag.state.id.us

Dan Steckel
Deputy AG, Division
of Human Resources
208/429-5507
dsteckel@dhr.state.id.us

Lori Autio
Risk Management Loss
Control Specialist
208/332-1867
lautio@adm.state.id.us

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comments or suggestions,
please contact us at 208/
332-1860 or
rm@adm.state.id.us*

State of Idaho
Dept. of Administration,
Office of Insurance
Management
650 W State St.
P.O. Box 83720
Boise, ID 83720-0079
Tel: 208/332-1860
Fax: 208/334-5315

Cynthia Ness, Manager

*Kit Coffin,
Claims/Loss Control
Operations Supervisor*

*Carol Pettibon,
Claims Adjudicator*

*Ray Heidt,
Claims Adjudicator*

*Lori Autio,
Loss Control Specialist*

*Cindy Dickinson
Contracts/Administration
Operations Supervisor*

*Joan Compton,
Insurance Analyst*

Annual Inventory Due March 1

It's that time of year again! Each year agencies inventory their personal property, adding new items and deleting others. This inventory list is separate from items that agencies want covered under Inland Marine insurance. You'll be receiving an Acknowledgement Form of Completion of Personal Property Inventory which should be returned to the Office of Insurance Management no later than March 1, 2002. If you have any questions about the form or the inventory process, please contact Joan Compton at 208/332-1872 or jcompton@adm.state.id.us

Minimum Requirements for Keeping A Personal Property Inventory System

- Property with values greater than \$2000. (This was changed on July 1, 2001 from values greater than \$300.)
- Detailed description of the item.
- Month and year the item was acquired.
- Acquisition cost or fair market value of the item.
- Current replacement cost of the item (except autos).
- Actual cash value of autos, not replacement cost (cash value = replacement cost minus depreciation).
- Detailed description the item's location. If possible, include the shop or office with responsibility for the item.
- Account or unit within the agency responsible for the property.

State of Idaho
Dept. of Administration,
Office of Insurance Management
650 W State St.
P.O. Box 83720
Boise, ID 83720-0079